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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,463	10/15/2001	William C. Johnson JR.	GEO-55	3692

7590

09/24/2002

Milton Wolson, Esq.  
Malina & Wolson  
Suite 501  
60 East 42nd Street  
New York, NY 10165

EXAMINER

STASHICK, ANTHONY D

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 09/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/977,463

Applicant(s)

JOHNSON

Examiner

Anthony D Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 5-7 are rejected under 35 U.S.C. 103(a) as being obvious over Krajcir et al.

4,908,963. Krajcir et al. '963 discloses substantially all the limitations as claimed including the following: a boot (see Figure 1) with an outer layer of leather (see col. 2, lines 20-23) stretched over a toe box (see col. 2, lines 20-23); a layer of insulating material secured to the inside of the toe box (see col. 2, lines 23-39); an outsole 5. Krajcir et al. '963 does not specifically state the thickness of the insulating layer. The thickness of the insulating layer would depend upon the amount of heat or insulation desired by the user and therefore would require only routine testing and optimization of one of ordinary skill in the art to find the thickness of the insulation layer necessary to provide the desired insulation and interior foot temperature. With respect to the cold insulating material not being compressed during the manufacturing process, this is a desired intended use and does not further limit the product claim by structurally defining the instant application over that of the prior art. Therefore, it would have been obvious to make the thickness of the insulating layer as thick as necessary to gain the desired temperature of the interior of the shoe to protect the user's foot from prolonged exposure to inclement cold weather.

3. Claims 1 and 5-7 are rejected under 35 U.S.C. 103(a) as being obvious over Mitchell 2001/0007179. Mitchell '179 discloses substantially all the limitations as claimed including the following: a boot (see Figure 4) with an outer layer of leather (see paragraph [0013]) stretched over a

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toe box (stretched over steel toe defining the toe box); a layer of insulating material secured to the inside of the toe box (10); an outsole (12). Mitchell '179 does not specifically state the thickness of the insulating layer. The thickness of the insulating layer would depend upon the amount of heat or insulation desired by the user and therefore would require only routine testing and optimization of one of ordinary skill in the art to find the thickness of the insulation layer necessary to provide the desired insulation and interior foot temperature. With respect to the cold insulating material not being compressed during the manufacturing process, this is a desired intended use and does not further limit the product claim by structurally defining the instant application over that of the prior art. Therefore, it would have been obvious to make the thickness of the insulating layer as thick as necessary to gain the desired temperature of the interior of the shoe to protect the user's foot from prolonged exposure to inclement cold weather.

#### *Response to Arguments*

4. Applicant's arguments filed July 9, 2002 have been fully considered but they are not persuasive. Applicant argues that neither of the references used to reject the claims disclose a boot having an oversized toe box with an uncompressed cold insulating material located therein. This argument is not clearly understood. Both references disclose a toe box to a boot that is larger than the area that a user's toes would take up, i.e. "oversized", especially since both have a protector located therein to protect the user's foot. Each of the references also provide for an insulating material, i.e. foam, to be placed inside the toe box to insulate the shoe. Therefore, it would have been a mere matter of testing and evaluation to find what the necessary thickness of the material would need to be to insulate the shoe to the desired comfortability. Applicant argues that it is not clear how the thickness of the cold insulating material can be achieved in the shoe in view of space limitations. It appears that the

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height of the toe box used would depend upon the thickness of the material necessary to provide the desired comfort.

*Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Tuesday through Friday from 8:30 am until 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

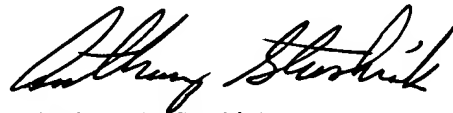
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Informal Fax for 3728	(703) 308-7769

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	<a href="http://www.uspto.gov/">http://www.uspto.gov/</a>



Anthony D Stashick  
Primary Examiner  
Art Unit 3728

ADS  
September 22, 2002